

Chapter 1

PROJECT BACKGROUND, PRIOR STUDIES, AND OUTLINE OF REPORT

1.1 Background to the Problem

The disproportionate rate of minority juveniles in detention centers, correctional facilities, jails, and prisons has been a cause for concern about the juvenile justice system as evidenced by the 1988 reauthorization of the Juvenile Justice Delinquency Prevention (JJDP) Act. An amendment to Section 223 (a) (23) required each state to develop in its formula grants program methods to reduce the proportion of minority youth in secure facilities if the proportion exceeds their representation in the general population. Since 1974, the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention has provided formula grant funds to states and territories for the improvement of the juvenile justice system and services to delinquent and at risk youth.

1.2 Disproportionate Minority Confinement in Kentucky

During the 1990s, an increase in serious juvenile crime, an increase in the number of juveniles detained in county facilities, criticism of the nature and costs of housing juveniles, investigations by the U.S. Department of Justice, and general criticism from state and local sources led the Kentucky General Assembly to take action. The Department of Juvenile Justice (DJJ) was established in 1996 through legislation enacted by the Kentucky General Assembly. The legislation also called for the creation of the Juvenile Justice Advisory Committee (JJAC) to be appointed by the governor and assigned the responsibilities of: (1) the development and establishment of statewide prevention and treatment programs for juvenile offenders, and (2) administration of the OJJDP Formula Grants Program. The JJAC makes recommendations to the DJJ and the Juvenile Justice Advisory Board (JJAB) relating to the operation and programming of the juvenile justice system and compliance with the JJDP Act. The Juvenile Justice Advisory Board (JJAB) was also created by the legislation for the purposes of developing criteria for intervention, diversion, and prevention programs, and to develop funding priorities

including recommendations to DJJ regarding the use of funds. The JJAB is appointed by the Governor and has the responsibility to make recommendations to the legislature and the Governor.

In December of 1996, the Department of Juvenile Justice became responsible for all adjudicated juveniles (public and youthful offenders) committed to the care of the state. Prior to this date, the responsibility of juvenile care had come under the Department of Human Services (except for the Court Designated Worker Program and county operated detention facilities). Currently, the Cabinet For Families and Children maintains statutory responsibility for status offenders and children committed as the result of abuse, neglect, or dependency. In 1995, Kentucky's DMC Phase I Matrix was submitted to OJJDP in the Formula Grants Application. The Department of Juvenile Justice dedicated \$100,000 of the FY 1997 Formula Grant Funds to the study of the extent of DMC in Kentucky. The research was aimed at tracking the flow of cases through the critical decision points (arrest, intake, disposition, detention, etc.). In February of 1999, Kentucky came into compliance with the core requirements of the JJDP Act of 1974, by completing the removal of juveniles from adult jails. In May of 1999, a DMC Subcommittee (formed from JJAC members and DJJ staff) began the formulation of a plan to conduct the DMC identification study. After deliberation, the DMC subcommittee decided that investigating DMC required more than looking at detention, because other steps in the juvenile justice system needed to be included in this study. As a result, the DMC subcommittee reorganized into the Subcommittee on Equity and Justice for All Youth (SEJAY) and included members from various branches of state government concerned with youth and juveniles as well as advocacy groups and non-profit organizations. The mandate for the Subcommittee on Equity and Justice for All Youth is to address overrepresentation at all stages of juvenile processing and to develop a comprehensive plan to address DMC.

Current data systems do not allow for consistent statewide comparisons of race and juvenile justice processing in Kentucky, but the limited information available did allow the state to report on Phase I of the Disproportionate Minority Confinement

requirement to the Office of Juvenile Justice and Delinquency Prevention (Community Research Associates 2000). According to 1997 population estimates, Kentucky's population under age 17 is almost twenty-five percent of the total state population of 3,908,124 persons. This juvenile population is 90 percent white, 9.1 percent black, and .9 percent other races. Three indicators of minority disparities available from the report are indicative of the extent of the problem; (1) the percentage of minority youth admitted to detention, (2) the percentage of minority youth confined to juvenile facilities, and (3) the percentage of minority youth waived to criminal court as youthful offenders.

First, the report indicated that 7,347 juveniles were admitted to detention in 1999 and almost 40 percent were minorities. Race and gender breakdowns revealed that of those juveniles detained 43.7% were white male, 31.22% were black male, 2.06% were other male, 15.11% were white female, 7.57% were black female, and .34% were other female. Second, twenty-seven percent (27%) of youth committed to juvenile facilities after adjudication in 1999 were minorities. Of the 2911 juveniles, 73.4% were white, 24.82% were black, and 1.78% were of other races. Third, during the three-year period between January of 1997 and January of 2000, 56 percent or 188 juveniles referred to criminal court to stand trial as adults were black youth.

1.3 Previous Research

There are three central themes that emerge from the literature on the treatment of minorities in the criminal justice system which provide focus for studies of disproportionate minority confinement in juvenile justice facilities.

Theme 1: African-Americans are treated more harshly within the justice system because they tend to engage in worse acts of crime and have criminal histories of more arrests, convictions and incarcerations compared to the average white juvenile (Wilbanks 1987).

Here it is argued that at a superficial level there may seem to be inequities in the criminal justice system but that harsher treatment meted out for more severe crimes negates the notion of bias. Here, the incapacitation of wrongdoers is required because of

the comparatively greater threat to society. People who engage in heinous acts against the public should be treated more stringently by the police, courts, prosecutors, referees, and juries and increasingly juveniles who fall into this category are likely to be treated more harshly (Wilbanks 1987). According to Unnever and Hembroff (1988) the race of the offender becomes a status-determining characteristic. There are external and internal factors that govern the assumptions about differences in the delinquent behaviors of minority and white youth. External factors, including peer pressure, family disruption, and unstable environmental stimuli push the individual into action. Under normal circumstances these offenders would not engage in delinquent activity. Thus, these youths are more amenable to rehabilitation, need less formal processing, and are not to blame for personal transgressions. It is argued that if the external factors were removed then the delinquent behavior would similarly disappear.

On the other hand, behavior in accordance with internal factors is much more dangerous to the general public because it is seen as the cause of delinquent transgression as a reflection of poor impulse control. These offenders are more likely to engage in thrill-seeking behavior and less likely to weigh the consequences of their behavior against the pleasure of doing the delinquent act. Therefore, more formal social control is necessary as it is unknown when the individual wrongdoer will engage in delinquent behavior. In general, African-Americans are regarded as those who are internally influenced and constitute a greater threat to the public compared to white Americans influenced more by external factors.

Theme 2: Racial bias permeates all levels of justice and even influences legislation and public policies that, a priori, are understood to have proportionately more detrimental impact upon African-Americans (Tonry 1995).

From this perspective, racial bias relies on the notion that the term crime, for many people, evokes an image of a young African-American male engaging in violent crime, most often with a handgun. In the minds of the average American the idea of crime is synonymous with black crime and the general public, the media, and even policy

makers focus most of their attention on street crime and street offenders. From this perspective, two similarly situated individuals in terms of social class, criminal history, and the criminal act may be treated differently because extra-legal factors, such as race, are paramount in determining how to treat and handle offenders. The process begins by creating a typical profile that practitioners use to define the social characteristics of dangerous men (McCleary 1980). Research has shown that there are a number of extra-legal factors such as dress, demeanor, and visibility that influence police decision-making in making an arrest (Lundman 1996; Majors and Billson 1992; Piliavin and Briar 1964). These extra-legal factors are seen as a set of status determining characteristics that define blacks as likely criminal offenders in the eyes of the police (Anderson 1990, 1999).

Once an individual is arrested due to this set of status determining characteristics, they are deemed a threat to society because of extra-legal factors in conjunction with legal ones. It is likely that their criminal status is amplified at each successive level of juvenile justice administration. In other words, once there is bias at the point of entrance into the justice system that bias is more likely to incrementally increase throughout the process. This amplification of criminal status is shown by the ability of the rate of arrest among minorities to successfully predict the rate of incarceration (Austin and Allen 2000) and differential treatment in the legal system (Bridges and Crutchfield 1988). In fact, the practices have been shown to occur at several levels of the justice system including police departments (Smith and Visher 1981), attorneys' offices (Sudnow 1965), court work groups (Walker 1980), parole and probation offices (McCleary 1980), and diversion programs (Leiber and Stairs 1999). Theoretically, and within the public imagination, blacks are perceived to be greater threats to public safety and must be socially controlled by formal practitioners (Sudnow 1965). The proof of this image rests in the disproportionate representation of minority groups, namely African-Americans, at every level of the system of justice (Walker, Spohn, and Delone 1996).

Theme 3: The nature of the criminal justice system and the inconsistent and situational nature of racial disparity can vary by both state and local jurisdictions and also may vary between important decision-making points within any one jurisdiction (Crutchfield,

Bridges, and Pitchford 1994; Kleck 1981).

These researchers argue that the examination of racial disparity should be carefully considered and suggest that disparity may not exist equally within all states or even county jurisdictions. In fact, it may vary by the phase of the system in which the offender participates (Crutchfield, Bridges, and Pitchford 1994). Thus, uncovering bias in the juvenile justice system should consider all decision-making points, not just one (Kleck 1981), more than one jurisdiction should be examined, and finally, the level of aggregation should be carefully considered (Crutchfield, Bridges, and Pitchford 1994).

1.4 Summary of State Studies

This section reports on the findings from the Phase II reports from other state studies. The focus is on the methods, findings, and recommendations that may be useful to study of the problem in the Commonwealth of Kentucky. Appendix Table 1.1 is a summary of the findings relevant to Disproportionate Minority Confinement throughout a variety of decision-making levels in juvenile justice processing. Many of the studies examined only a few of the possible decision making levels; although, the range of levels on the table represents the total levels reported in all state reports. In some cases, the findings of DMC reported in the state studies are for selected counties or rural and urban areas and do not represent the total sample studied. In any case, most samples studied were not representative of the states as a whole.

Twenty-one (21) Phase II DMC State Reports were reviewed of which seventeen (17) state studies found evidence of DMC. DMC was found to be most prevalent in all areas of intake into the juvenile justice system including arrest in 10 of 17 states, referral in 6 of 17 states, and detention in 11 of 17 states, with two (2) additional states reporting evidence of DMC in diversion of youth. The filing of petitions or charges, prosecution, and being adjudicated delinquent represents the adjudication process here. The Appendix Table 1.1 shows that evidence of DMC is found in less than half of the state studies, but is most prevalent in the filing of charges in 7 of 17 states and adjudication as delinquent in 7 of 17 states with only two (2) states' studies reporting DMC in prosecution. The last

stage in the process is the disposition stage represented by the categories of sentencing, commitment, and confinement. Sentencing was found to be a problem in DMC in 6 of 17 states, confinement was found to be problematic in 7 of 17 states, and commitment a problem in 4 of 17 states.

The findings of the prevalence of DMC and stages of juvenile justice processing where the occurrence of DMC emerges confirms the findings of other researchers (Crutchfield, Bridges and Pitchford 1994; Kleck 1981) who argue that the overrepresentation of minorities that emerges at the state level can be isolated to certain geographical areas within states and to certain stages in the processing of juveniles. On the other hand, these studies show that DMC is a systemic problem from a national point of view and occurs in all three broad stages of juvenile processing to include intake, adjudication, and disposition.

1.5 Outline of the Report

Subsequent sections of this report detail the research model, objectives, and methods, and summarize findings relative to the three research questions for the study of DMC in the Commonwealth of Kentucky. Chapter 2 discusses the methods and objectives of the report. Chapter 3 presents an analysis of procedures, and decision-making criteria at key decision-making levels in the juvenile justice process. Chapter 4 presents qualitative findings on perceptions and knowledge about minority overrepresentation from personnel staffing the juvenile justice system in five (5) counties. The perceptions, knowledge and experiences of juveniles within the juvenile justice system are presented in chapter 5. Chapter 6 presents the results of quantitative analysis of process and outcomes of the juvenile justice system. Finally, chapter 7 offers a summary of the findings on minority overrepresentation and recommendations about public policies needed to address the issues associated with minority overrepresentation.